TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

No. 1053.

THE UNITED STATES, APPELLANTS,

vs.

JAMES DRISCOLL.

APPEAL FROM THE COURT OF CLAIMS.

FILED FEBRUARY 25, 1878.

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1 Court of claims of the United States.

I.—*Petition.*—No. 8069.—*Filed Nov.* 20, 1878.—*J. R.*

JAMES DRISCOLL
vs.
THE UNITED STATES.

To the honorable the Court of Claims of the United States:

The petition of James Driscoll, of the city of Richmond, in the State of Virginia, and a citizen of the United States, respectfully states that he was employed by the Government of the United States as a stone-cutter on the new State Department, Washington, D. C., for the period commencing June 25, 1868, and ending August, 1873, at the agreed price of four dollars and twenty five cents per day; that during said period he worked, as near as he can now recollect (not having access to the rolls on which he was paid, cannot tell the exact time, but of which time he will make positive proof to this honorable court), four hundred and eighty nine days, and that he worked during all of that portion of said period which he was employed ten hours in each day, and was only paid the regular price for each day's work, which, by act of Congress approved June 25, 1868, consisted of eight hours' labor; that he has requested payment from the proper accounting officers of the Treasury for the balance due him for said extra work, but that the payment by them has been refused.

Claimant further represents that there is now due and owing to him from the Government of the United States, on account of the services rendered as aforesaid, the sum of five hundred and nineteen dollars and fifty six cents, for which sum he demands judgment against said defendant.

J. DANIELS,
Attorney for Claimant, Washington, D. C.

2 DISTRICT OF COLUMBIA,
County of Washington, ss:

Joseph Daniels, of said county, having been duly sworn, deposes and says that he is the attorney for the above-named claimant, that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made, except as in said petition stated; that said claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets, and that the deponent verily believes the facts stated in said petition are true.

J. DANIELS.

Sworn to and subscribed before me this 6th day of November, 1878.
SEAL. J. G. KIMBALL,
Notary Public.

3 II.—*Traverse.*—*Filed January* 20, 1877.

And now comes the Attorney General, on behalf of the United States, and makes answer to the petition of the claimant herein, and, not confessing the same, or any part thereof, denies each and every the allegations therein contained, and calls for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the United States are indebted to the said claimant in the sum of five

hundred and nineteen dollars and fifty-six cents, says that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, denies the said allegation.

THOMAS SIMONS,
Assistant Attorney-General.

4 III.—*Motion to amend petition and order of court.—Filed January* 30, 1878.

And now comes the claimant, by his attorney, and moves the court for leave to amend the petition in this case in the manner and in substance as follows, to wit:

SHELLABERGER & WILSON,
JOS. CASEY,
J. DANIELS,
Attorneys for Claimant.

Upon the foregoing motion to amend petition the court made the following ruling, to wit:

Allowed, with privilege to defendants of filing within one week an answer or plea thereto, and of having the case transferred to the
5 general docket for new trial, if they deem it important to their interest to present other evidence on account of any allegations in the amended petition, and if they so elect.

IV.—*Amended petition.—Filed January* 30, 1878.

To the honorable the judges of the Court of Claims:

The petition of James Driscoll, a citizen of the United States, residing at the city of Richmond, in the State of Virginia, respectfully shows: That he was employed by and on behalf of the United States near the city of Richmond, in the State of Virginia, as a stone-cutter, in dressing and cutting stone for the new State Department then being built
6 at the city of Washington, in the District of Columbia.

That the said work of cutting and dressing said stone was then and there being done, performed, and executed by the direction and under the control of Alfred B. Mullett, supervising architect of said new State Department; the said Mullett being then and there duly authorized and empowed by law to direct, control, and supervise the said work and employment by and in behalf of the United States.

This petitioner further shows that he commenced work under said employment as aforesaid on the twenty-fifth day of March, 1872, and so continued in said employment until the thirtieth day of Septem-
7 ber, A. D. 1873; that during the said period this petitioner was actually employed and labored as a stone-cutter on the work aforesaid about four hundred days, and during said period this petitioner was compelled and required to work and labor ten hours each day for two hundred and twenty-four days and three-fourths of a day, to wit, from the fifteenth day of March, 1872, until the twelfth day of June, 1872, sixty-eight days, and from the fifteenth day of March, 1873, until

the thirtieth day of September, 1873, one hundred fifty-six and three-fourth days, or a total of two hundred and twenty-four and three-fourth days, as aforesaid: and that for said work and services of ten
8 hours per day he was paid at and after the rate of four dollars per day for five and one-half of said days, at the rate of four dollars and twenty five cents per day for sixty-two and one-half of said days, and at the rate of four dollars and fifty cents per day for one hundred and fifty-six and one-quarter of said days: and that these several and respective sums or daily wages so paid to your petitioner were ther and there the usual and customary wages paid by private employers to other stone-cutters of the same skill and experience of your petitioner in the neighborhood and vicinity where such labor was performed for similar work as and for a day's wages.

9 And this petitioner here shows to the court that under and by virtue of the act of Congress approved June 25th, 1868, commonly called and known as the "eight-hour law," your petitioner, being as aforesaid employed by and on behalf of the Government of the United States as a laborer, workman, or mechanic, was entitled to have and receive of and from the United States a full and entire day's wages for each eight hours he labored or wrought in said employment as aforesaid.

Yet so it is that the said Mullett and the agents and servants of the United States in charge of said work, and who had direction and control of the same, pretended, alleged, and declared that this peti-
10 tioner was not so employed by or on behalf of the United States as such workman or mechanic, but that he was employed by or on behalf of one Albert Ordway, who, together with the said Mullett and other agents and servants of the United States, then and there alle*d*ged that he was, as he assumed and pretended to be, a contractor for the cutting, dressing, and shipping of the granite for the said new State Department building, and as such and alle*d*ged contractor represented that the said work was under the sole direction, management, and control of him, the said Albert Ordway.

And your petitioner, relying upon the pretensions and representations and upon the acts of the said Mullett and the said Ordway
11 and others acting in this behalf for the United States in the said premises, did then and there continue in said employment, and did continue to work and labor ten hours each day for the days aforesaid, and did also, under and in consequence of the same pretensions, representations and acts, and upon the belief and impression made thereby, receive*d* from time to time from the said United States, through the said Albert Ordway, the several days' wages then accrued of ten hours each, and under the said belief and impression did give receipts for said wages, not knowing the real facts in the case,
12 that your petitioner had been and was in fact and truth employed by and on behalf of the United States, and was from time to time being paid said wages by the United States, by moneys sent to and given to said Ordway for that purpose by the proper authorities of the United States.

And your petitioner further alleges that the said Albert Ordway was not in fact or in law a contractor for the cutting, dressing, and shipping said granite, but was in fact and in law a mere agent or servant of the United States, in charge of said work, doing and performing the same under the direction, management, and control of the said Alfred B. Mullett, supervising architect of said building, and of the agents
13 and superintendents then and there employed by him.

And your petitioner since his said employment has ceased, to wit, since the thirtieth day of September, A. D. 1873, and since the receipt of his said wages as aforesaid, has come to the knowledge of the facts herein alleged, to wit, that he was in fact and in law employed by and on behalf of the United States; that said Ordway was not in fact or law a contractor for cutting and dressing said granite, and that your petitioner was and is, in fact and in law, entitled to the benefit of the said act of Congress of June 25th, 1868, known as the "eight-hour law."

11 And your petitioner here shows that he worked in said employment during the time herein set forth over and above said eight hours a day, four hundred and fifty-nine and one-half (459½) hours, making in all fifty-seven days and seven sixteenth' of a day of eight hours each, and for which there is due and owing to your petitioner of and from the United States the sum of two hundred and fifty-three dollars and fifty-six cents.

And for this sum he prays the judgment of this honorable court, and he will pray, &c.

JO'S CASEY,
SHELLABAGER & WILSON,
& J. DANIELS,
Attorneys for Claimant. Washington, D. C.

15 DISTRICT OF COLUMBIA,
County of Washington, ss:

Joseph Daniels, being duly sworn, deposes and says that he is the attorney for the above-named claimant; that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made, except as in said petition stated; that said claimant is justly entitled to the amount claimed from the United States, after allowing all just credits and offsets, and that deponent verily believes the facts stated in said petition are true.

JOSEPH DANIELS.

Sworn and subscribed to before me this 28th day of January, 1878.
[SEAL.] S. A. TERRY,
Notary Public.

16 V.—*General traverse to amended petition and waiver of new trial.*—*Filed Feb'y 4th*, 1878.

And now comes the Attorney General, on behalf of the United States, and answering the amended petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the said petition be dismissed.

And as to so much of the said amended petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against said government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

THOMAS SIMONS,
Assistant Attorney-General.

Defendants waive the privilege of a new trial under said amended petition allowed by order of the court thereon.

THOMAS SIMONS,
Ass't Att'y Gen'l.

17 VI.— *Findings of fact, and conclusion of law.*

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I. In the year 1871, advertisement of the following notice, inviting proposals as therein set forth, was duly published:

"*Proposals for granite for the new State Department.*

"OFFICE OF SUPERVISING ARCHITECT,
"*Washington, May* 24, 1871.

"Sealed proposals will be received until 12 o'clock m. of the 22d day of June, 1871, at the office of the Supervising Architect of the Treasury Department, for furnishing and delivering at the site of the proposed building all the dimension granite required for the exterior of the new State Department, for which about 180,000 cubic feet will be required. Proposals must state the price per cubic foot for stones whose dimensions do not exceed seventy cubic feet, and the rate of increase in price for stones exceeding twenty cubic feet. The exact average size of the stones cannot at present be given, but approximate 40 cubic feet. Stones to be quarried and delivered according to a schedule of net sizes that will be furnished the contractor. One inch will be allowed for quarry dimensions on each worked face of the stone.

"Each bid must be accompanied by a sample block 12 inches cube of the granite it is proposed to furnish, which must be sound, durable, of uniform color and good grain, free from discoloring or other foreign substances, and capable of withstanding the action of the elements, and that has been fully tested by use in buildings, and is from quarries capable of furnishing the quality and quanity desired within one year, and from which stone has been or is now being used for first-class buildings.

"Bidders will state how soon they can commence the delivery of stone, and the amount per week they can deliver. They will also state the average and maximum size of stone that can be obtained from their quarry. No bids will be received except from the owners or lessees of the quarries from which the stone is proposed to be furnished. All proposals must be made on the printed forms to be obtained from the Supervising Architect, and be accompanied by a penal bond, in the sum of fifty thousand dollars ($50,000), that the bidder will execute and perform the contract if awarded to him, and give bond therefor in the penal sum of one hundred thousand dollars ($100,000), and a valid and binding lease of the quarry to the government as security for the faithful performance of the contract; the lease to take effect upon the failure of the contractor to comply with the terms of the contract. Said lease to authorize the government to take full possession of the quarry, and work it at the expense of the contractor in case of such default.

"The right to reject any or all bids received is reserved. Pro-
18 posals must be inclosed in a sealed envelope, indorsed 'Proposals for granite for new State Department,' and addressed to—

"A. B. MULLETT.

"*Supervising Architect, Treasury Department, Washington, D. C.*"

II. On the 19th day of June, 1871, Albert Ordway submitted to said Mullett the following bid, in answer to said advertisement:

"*Proposals for granite for the new State Department.*

"RICHMOND, VA., *June* 19, 1871.

"I hereby propose to furnish all the dimension-granite required for the exterior of the new State Department, and deliver the same on the site of the proposed building, in conformity with all the requirements of advertisement of A. B. Mullett, esq., Supervising Architect of the Treasury Department, under date of May 24th, for the following prices:

"(59) Fifty-nine cents per cubic foot for stones whose dimensions do not exceed twenty cubic feet.

"($\frac{9}{10}$) Nine-tenths of one per cent. per cubic foot to be added to every foot for stones whose dimensions exceed twenty cubic feet.

"I propose to furnish this stone from quarries situated near Richmond, Va., of what is known as the 'Richmond' or 'James River granite,' samples of which have been furnished the Supervising Architect.

"In reply to the requirements of the published proposals, I would state as follows:

"In regard to 'quality and quantity,' the 'Richmond granite' meets all the requirements of the advertisement. It 'has been fully tested by use in buildings, and is from quarries capable of furnishing the quality and quantity desired within one year,' or in much less time if desired by the department. It 'has been' used in first-class buildings, among which is the Richmond custom-house; 'is now' being used for first-class buildings, and among which is court-house at Harlem, N. Y.; would also cite its use in the Washington monument at Richmond; its extensive use for cemetery and monumental work at Greenwood Cemetery, and the large amounts furnished to New York and Philadelphia for paving-blocks, selected for great durability. I further claim, in addition to possessing the qualities made requisite by advertisement, that the 'Richmond granite' will work and dress cheaper than any other granite of equal quality now quarried in this country.

"I can 'commence the delivery of stone' within thirty days from award of contract. Can deliver four hundred and fifty (450) tons per week, and, if required, largely increase that amount. The 'average sizes of stone that can be obtained from quarry' are (say) from thirty to eighty cubic feet. The 'maximum' size is difficult to state, but should say one hundred feet in length, and of almost any required dimensions that could be lifted by machinery.

"I am the owner of one quarry, known as 'James River Quarry,' situated on south bank of James River, below Richmond, and the lessee of two others, known as 'Old Dominion Quarries,' and 'Powhite Quarry,' in same vicinity. I propose to give the department the choice of either of my said quarries, or all combined, from which the stone to be taken, and on which leases shall be executed as required under terms of advertisement.

"Hereto is annexed printed copy of proposals, on terms of which this bid is made and accompanying bond executed.

"Respectfully submitted.

"ALBERT ORDWAY."

19 III. In pursuance of said advertisement and bid a contract was entered into between the parties therein named, of which the following is a copy:

"*Contract between the Government of the United States and Albert Ordway.*

"This contract, made and entered into this sixteenth day of Novem-

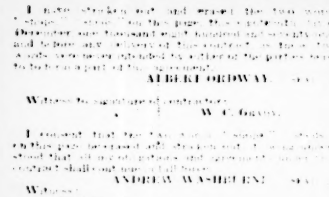
ber, A. D. 1871, by and between Alfred B. Mullett, Supervising Architect of the new State Department building in course of erection in Washington, D. C., for and in behalf of the United States of America, of the first part, and Albert Ordway, of the city of Richmond, State of Virginia, of the second part, to whom was awarded a contract for certain granite required for the construction of the new State Department building, on his bid, dated June 19th, A. D. 1871, and received under advertisement dated May 24, A. D. 1871, witnesseth:

"That the party of the second part covenants to and with the party of the first part to furnish from either or both of the quarries near the James River, in the State of Virginia, known as the 'James River' and 'Green' or 'Westham' quarries, at the option of the party of the first part, and deliver at the site of the aforesaid building, all the granite that may be required for the exterior walls of the superstructure of the building aforesaid, the walls of the court-yard alone excepted, at such time and in such quantities as may from time to time be ordered by the party of the first part, and that the granite shall be of the best quality to be obtained from the quarries aforesaid, and of uniform color, free from flaws, stains, or discoloring matter, and to the entire satisfaction of the party of the first part.

"And the party of the second part further agrees to furnish from the said quarries, and at such time or times as may be ordered, and at the option of the party of the first part, and on the same terms and conditions, and at the same rates, and of the same kind and quality, all the granite which may be required for the exterior walls of the superstructure of the entire State, War, and Navy Department building, the walls of the court-yard excepted, when the construction of the same or of any additional part thereof shall be authorized.

"And the party of the first part, acting for and in behalf of the United States, doth covenant and agree to pay, or cause to be paid, by the United States unto the said party of the second part, or to his heirs, executors, administrators, or assigns, in lawful money of the United States, the sum of fifty-nine (59) cents per cubic foot for every cubic foot in stones delivered and accepted under this contract whose quarried dimensions do not exceed twenty (20) cubic feet, with an increase in price of nine-tenths ($\frac{9}{10}$) of one (1) cent per cubic foot for each additional cubic foot in stones whose dimensions exceed twenty (20) cubic feet; that is to say, stones whose dimensions are twenty-one (21) cubic feet shall be paid for at the rate of fifty-nine and nine-tenths ($59\frac{9}{10}$) cents per cubic foot; stones of twenty-two (22) cubic feet at the rate of sixty and eight-tenths ($60\frac{8}{10}$) cents per cubic foot, and for stones of greater dimensions at a rate of increased price to be determined in like manner.

"The stones to be furnished according to schedules of net sizes to be furnished by the party of the first part, one (1) inch to be added to said schedule-sizes for every worked face for quarry dimensions. Payments to be made for the granite in the following manner, viz: Ninety (90) per cent. (nine tenths) of the value of each schedule to be paid on its delivery at the site of the building, and ten (10) per cent. (one-
20 tenth thereof) will be retained until the completion of the entire contract and the approval and acceptance of the same by the party of the first part; which amounts shall be forfeited by the party of the second part in event of the non-fulfillment of this contract to the entire satisfaction of the party of the first part: provided that no more granite than shall be required for the construction of any story shall be included in one schedule.



"And the party of the second part hereby agrees to furnish all the labor, tools, and materials necessary to cut, dress, and box at the quarry or quarries all the granite aforesaid, in such manner as may be directed by the party of the first part, and also shops and sheds sufficient to accommodate one hundred granite-cutters, with a proper proportion of other mechanics.

"And the party of the first part, acting for and in behalf of the United States, doth covenant and agree to pay, or cause to be paid, unto the said party of the second part, or to his heirs, executors, administrators, or assigns, in lawful money of the United States, the full cost of the said labor, tools, and materials, and also the insurance on the granite, increased by fifteen (15) per centum of such cost; and for the purpose of determining the amount thereof, the party of the first part shall employ such agent or agents as he may deem necessary, who shall take an account of such cost and expense, and shall, for that purpose, be afforded all necessary and proper facilities by the said party of the second part.

"And the party of the second part further agrees to furnish such number of men as may be deemed necessary for the proper prosecution of the work by the party of the first part, and the party of the second part further agrees to cut as well as furnish and deliver all the granite herein contracted for at such times as may be required by the party of the first part, and in default thereof to forfeit and pay to the United States the sum of one hundred (100) dollars per diem for each and every day thereafter until the final delivery of the same, which sum shall be deducted from any moneys which may be due him; and if that amount be not due him, then his bondsmen are to be held liable for any deficiency, to be recovered of them by suit in the name of the United States.

'LEASE.

"And the said party of the second part further covenants and agrees to and with the party of the first part, to lease, and hereby does let and lease, the quarries in the State of Virginia, near the James River, known as the 'James River' and 'Green' or 'Westham' quarries, with all and singular the tools, buildings, wharves, and appurtenances thereunto appertaining, unto the said party of the first part, with the full right, authority, and power to enter upon, occupy, and use the same, or procure therefrom any or all such stones as the party of the second part shall fail, omit, or decline to furnish, and said lease shall continue in full force until the final completion of the delivery of the granite required for the entire new State, War, and Navy Department building; it being understood and agreed that the object of this lease is to secure to the party of the first part a sufficient and suitable supply of granite for said building from the quarry or quarries aforesaid, and that such entry or occupancy of the said premises shall not be made by the party of the first part unless the party of the second part shall be in default, and unless the party of the first part shall give to the party of the second part eight (8) days' notice of intention to do so, said notice to be in writing, and served personally upon, or left at the shop, office, or usual place of abode of, the said party of the second part, or with his agent or agents; and in case of said default or failure to comply with the conditions of this contract at the end of eight days, the party of the first part

shall enter into full and complete possession of the said quarry or quarries, with their appurtenances as aforesaid, and shall work them at the expense of said party of the second part, and the full expense of said working and procuring the stone, and of boxing, shipping, and delivering the same at the site of the building aforesaid, shall, after deducting the value of the granite as hereinbefore agreed, be increased by fifteen (15) per centum, which amount shall be deducted from any money or moneys that may be due said party of the second part: and if that amount be not due him, then his sureties are to be held liable for any deficiency, to be recovered from them by suit in the name of the United States. In the event of any such entry, occupancy, or use, under this contract and lease, the quarry or quarries shall be worked by the party of the first part, or under his direction, in such workmanlike manner as not unnecessarily to injure the same, and the appurtenances shall be kept in good repair, usual wear and tear excepted.

"And the premises and appurtenances shall be duly released and restored to the party of the second part, or his legal representatives, without unnecessary delay, whenever the purpose of this lease, as herein declared, shall have been accomplished.

"It is further agreed between the parties to this contract that the party of the second part shall execute, with two or more good and sufficient sureties, a bond to the United States in the sum of fifty thousand dollars ($50,000), conditioned for the faithful performance of this contract, and the agreements and covenants herein made by said party of the second part.

"It is also covenanted and understood that no member of Congress, or other person whose name is not at this time disclosed, shall be admitted to any interest in this contract: and it is further covenanted and agreed that this contract shall not be assigned except by consent of the Secretary of State, and that any assignment thereof, except as aforesaid, will be a forfeiture of the same.

"It is further covenanted and agreed, by and between the parties hereto, that this contract shall be valid and binding when approved by the Secretary of State, and not otherwise, and that no departure from its conditions shall be made without his written consent.

"In witness whereof the parties hereto have hereunto subscribed their names and affixed their seals the day and year first above written.

"A. B. MULLETT, [SEAL.
"*Supervising Architect.*
"ALBERT ORDWAY. [SEAL.]
"*Contractor.*

"Witnesses to signature of supervising architect:

"J. C. RANKIN.
"L. E. GANNON.

"Witnesses to signature of the contractor:

"WM H. HOFFMAN.
"H. G. JACOBS."

22 Said contract was approved by the Secretary of State November 18, 1871, and on the 12th of January, 1872, it was entered of record in the office of the clerk of the county court for Chesterfield County, Virginia, the county in which the quarries therein mentioned were situated.

IV. On the 18th of December, A. D. 1871, the following supplementary contract was entered into as therein set forth:

"*Supplemental contract between the United States of America and Albert Ordway.*

[Int. rev. stamp, 5 c's.]

"Whereas by indenture bearing date November 16th, 1871, the United States of America, by Alfred B. Mullett, supervising architect of the new State Department building in course of erection in Washington, D. C., of the first part, and Albert Ordway, of the city of Richmond, State of Virginia, of the second part, contracted for the supply of granite for the exterior walls of the superstructure of the new State Department building, the walls of the court-yards alone excepted, and for the working and dressing of the granite, as by reference to said indenture will more fully appear; and whereas, further, in said indenture the party of the second part agreed to erect and furnish, at his own cost and expense, shops and sheds sufficient to accommodate one hundred granite-cutters, with a proper proportion of other mechanics: And now, therefore, this indenture, made and entered into this eighteenth day of December, 1871, by and between said parties, witnesseth, that it is mutually agreed—

"That if at any time the party of the first part should deem it necessary that a greater number than one hundred of granite-cutters, with a proper proportion of other mechanics, as therein stipulated, should be employed by the party of the second part at the quarry or quarries, that then the party of the second part will erect temporary shops, sheds, &c., for the accommodation of such additional force, on the written order and under the direction of the party of the first part; and the party of the first part hereby agrees to pay or cause to be paid, in lawful money of the United States, the cost of such additional shops, sheds, &c., increased by fifteen per centum. In witness whereof the parties hereto have hereunto subscribed their names and affixed their seals this eighteenth day of December, A. D. 1871.

"A. B. MULLETT, [SEAL.]
"*Supervising Architect.*

"Witnesses to signature of the supervising architect:
"H. G. JACOBS.
"WM. H. HOFFMAN.

"ALBERT ORDWAY, [SEAL.]
"*Contractor.*

"Witnesses to signature of the contractor:
"W. C. GRADY.
"L. E. GANNON.
"Approved Dec. 19, 1871.

"HAMILTON FISH,
"*Secretary of State.*"

V. In pursuance of said contract and the supplement thereto, during the period of the claimant's employment, said Ordway furnished tools, materials, and labor, and the defendants paid therefor, in the manner and form hereinafter set forth.

23 VI. The defendants employed a superintendent, paid directly by themselves, whose duty it was to supervise and see that the work was done according to contract, that the price paid did not exceed the market rates, and that the plans were followed and the stone per-

feet; to verify the time of the employés by himself or his clerk; to keep an account of the cost of each particular stone and the name of the man who cut it; to approve of all purchases of material which Ordway had to make for use in cutting, dressing, and boxing stone; and at the end of the month, to certify M'r Ordway's bills for the same, and that he had expended the materials on the work. It was his duty also to notify the contractor that the services of any man he might specify were not satisfactory, and in case the contractor persisted in retaining him it would have been his duty to refuse to certify the pay-rolls. The defendants also employed a clerk to the superintendent, paid in like manner directly by themselves.

VII. In January, A. D. 1872, on the recommendation and at the request of A. B. Mullett, Supervising Architect, as aforesaid, R. A. Miller was employed as foreman of granite-cutters on said work under said contract, was entered on the pay-rolls monthly as an employé of said Ordway, and was paid, through said Ordway, in the same manner as the claimant was paid, and Ordway was allowed fifteen per cent. additional, as in the case of all other employés on said work except said superintendent and clerk.

VIII. The employés were paid in the following manner: When a man was set at work the foreman, Miller, gave his name to the clerk of the superintendent aforesaid, who put it on the time-book, and the foreman of the gang put the price in pencil opposite the man's name. The price was not agreed upon at first, M'r Ordway giving the men to understand that he would pay whatever wages he would be allowed by the superintendent. Said clerk of the superintendent kept a ledger-account, made out a pay roll at the end of each month, and had the men sign the same. Said pay-roll was then approved by the government superintendent and delivered to M'r Ordway, who took the same to Washington and received payment therefor from the defendants, with fifteen per cent. added, according to the contract. He then returned, and paid the men according to the pay-roll and their receipts thereon.

The pay-roll for the month of March, 1872, was as follows, and all the subsequent monthly pay-rolls were in like form; and they were all surrendered to and retained by the government officers in the Treasury Department:

"No. 1.—*Pay roll of the mechanics and laborers on the new State Department, &c., during the month of March*, 1872.

"We, the undersigned, acknowledge to have received from Albert Ordway the amounts hereunto set opposite our names, respectively, in full payment of our services for the time specified.

No.	Names.	Occupation.	Term of service. Commenced.	Term of service. Expired.	No. of days.	Price per day.	Amt.	Signers' names.	Witnesses' names.
1									
2	R. A. Miller	Foreman	Mar. 1	Mar. 31	26	$5 50	$143 00	R. A. Miller	W. A. Larkin.
3									
4									
108	Ja's Driscoll	Cutter	Mar. 25	Mar. 31	5½	4 00	22 00	Ja's Driscoll	W. A. Larkin.

24 "I certify that the persons whose names appear on this pay-roll have performed the services hereunto stated, and that the services have been exclusively devoted to the work of granite-cutting for the new State, War, and Navy Departments, near city of Richmond, State of Virginia; that the wages paid each are not over the usual market rates: and that each person was a competent workman for the branch of work on which he was employed, and that a fair day's work was performed by him.

"E. WILLARD SMITH,
"*Superintendent and Time-keeper.*"

And the following is a copy of the voucher upon which said Ordway was paid for said month of March, 1872; and all subsequent monthly vouchers were in like form:

"*The United States to Albert Ordway, Dr.*

"On account of the appropriation for the construction of the new State, War, and Navy Departments at Washington, D. C.

Date.	Designation.	Application.	Amount.
1872.			
Mar. 30	Labor furnished during month of March, as per accompanying pay-roll as voucher.	Under my contract to cut, dress, and box granite for new State, War, and Navy Department's building.	$23,820 [illegible]
	Add 15 per cent., as per contract		3,573 07
			27,393 [illegible]
	Less overpayment to James Wilson	[illegible]	
	Less overpayment to Thomas Berkley	[illegible]	
	Less overpayment to Philip Cook	[illegible]	
	Less overpayment to John Grady	[illegible]	
			[illegible]
	Add 15 per cent., as per contract	[illegible]	[illegible]
			27,384 [illegible]

"I hereby certify that the articles above enumerated have been received by me in good order and of the quantities above stated.

"E. WILLARD SMITH.
"*Superintendent and Time keeper.*"

"I certify that the articles above enumerated have been received and the services performed; that they were necessary for, and have been or will be applied to the construction of the new State, War, and Navy Departments at Washington, D. C.; and that the prices paid were just and reasonable.

"E. WILLARD SMITH.
"*Superintendent and Time-keeper.*"

IX. In March, 1872, the claimant, Driscoll, applied for work to said Miller, who put him to work: gave his name to said clerk of the superintendent, who entered it on the time-book: and nothing was said about the number of hours' work per day nor the wages. The rate of wages was fixed and put on the time-book by the foreman of the gang, who was paid in the same manner and on the same rolls as said Miller, Driscoll, and the other employés.

At the time the claimant thus commenced work, the other men were laboring ten hours each calendar day, and throughout the time
25 of his employment he worked the same number of hours each calendar day as did the other stone-cutters employed in like manner.

X. During the month of March, 1872, the claimant worked 5½ calendar days, 10 hours each day. On the pay-roll for that month he was credited with 5½ days' work at $4 a day, amounting to $22; and he receipted therefor in full payment for his services for the time specified, as appears by the pay-roll, a copy of which, so far as is material, is set forth in the eighth finding.

In the next following month of April he worked 25½ days, and May 25 days, each of 10 hours; and was credited each month with said number of days' work, respectively, at $4.25 a day, on the pay-roll, which was made out, signed, and paid in the same form and manner as that for the month of March aforesaid.

In the month of June, 1872, the claimant worked 10 days of 10 hours each, when said Ordway received a letter from Supervising Architect Mullett, of which the following is a copy:

"TREASURY DEPARTMENT,
"OFFICE OF SUPERVISING ARCHITECT,
"*June* 11, 1872.

"SIR: You will please give the mechanics and laborers employed by you on the work of cutting and boxing the granite for the new State Department in this city the benefit of the eight-hour law from and after the date of this letter. It is not expected that any reduction will be made on this account.

"Very respectfully,

"A. B. MULLETT,
"*Supervising Architect.*"

"ALBERT ORDWAY, Esq.,
"*Richmond, Va.*"

By reason of the receipt of said letter, said Ordway immediately reduced the hours of labor of all the workmen to eight hours each calendar day, without reducing the rate of wages per day.

The claimant worked thereafter during said month 14 days more, 8 hours each day, and at the end of the month was credited with 21 days, at $4.25 per day, signed the roll acknowledging payment, and was paid in manner and form as for said month of March.

He also worked in the following July 25 days; September, 23½ days; October, 25 days; November, 12½ days; December, 22 days; January, 1873, 26 days; and February, 17½ days; each 8 hours per calendar day, for which he was credited said number of days, respectively, with wages at the rate of $4.25 for said month of July, and $4.50 for each of the other months, and was paid upon monthly pay-rolls and made out receipted by him in like manner and form as before set forth.

Thereafter, and before the work was renewed in March, 1873, said Mullett, the Supervising Architect aforesaid, told M'r Ordway that he would consider 10 hours a day's labor, and would only pay him at that rate, and from that time forward all the laborers were required to labor 10 hours each day for a day's work.

And the claimant worked in 1873, March, 13 days; April, 21 days; May, 23½ days; June, 21⅞ days; July, 26 days; August, 24½ days; and

September 24 days, 10 hours each day, for which he was credited on each monthly pay-roll for said number of days, respectively, at $4.50 per day, receipted for the same in full payment for his services,
26 and was paid in manner and form as hereinbefore set forth for the month of March, 1872.

XI. The price per day received by the claimant from month to month during his service was the same as that paid by private parties for like services of ten hours per day in the same locality. And the government superintendent aforesaid informed M'r Ordway, the contractor, that his instructions were to certify the cost and expenditures made by him, the said Ordway, upon the basis of wages paid in the locality.

ADDITIONAL FINDINGS MADE ON REQUEST OF CLAIMANT.

XII. Ordway represented to claimant and the other cutters that he was executing said work as a contractor under the United States, and not as a servant or mere employé of the government, and thus induced the said cutters and claimant to believe this, and they did said work, and gave the receipts hereinbefore stated, under the belief induced as aforesaid that Ordway was in fact such contractor.

XIII. The quarrying and furnishing the granite in the rough was done and performed under the superintendence, direction, and control of Ordway, the contractor, exclusively, subject only to inspection and acceptance by the United States.

XIV. The United States kept a store-house at the locality where said granite was cut and dressed, from which a great portion of the materials used in the work in which claimant was engaged were supplied; and the tools used in said work were marked with the letters "U. S." and belonged to the United States, and were turned over, when work was ended or suspended, as government property.

CONCLUSION OF LAW.

On the foregoing facts the claimant is not entitled to recover, for the reasons set forth at large in the opinion of the court; but as this is a class case, involving the same question arising in many hundred cases pending in this court, in no one of which is the amount claimed sufficiently large to authorize the claimant to appeal, the court decides, for the purpose of having the questions decided by the Supreme Court on appeal, that the claimant is entitled to recover $244.37.

27 VII.—*Requests of claimant's counsel for additional findings of fact, filed after the findings of fact filed by the court, and the rulings thereon.*

The claimant, by his counsel, respectfully asks the court to find the following additional ultimate facts:

1st. That the contract with Ordway for cutting, dressing, and boxing the granite, was made without notice inviting proposals by advertisement, and without proposals received for same.

2d. That such addition to said contract for cutting, dressing, &c., made with said Ordway, was made with the intention and for the
28 purpose of evading and defeating the provisions and policy of the act of Congress approved June 25, 1868, known as the eight hour law.

3d. That the claimant was employed on behalf of the United States, for the time hereinbefore set forth, and was paid by Ordway from time to time with money first furnished to him by the United States for that purpose.

4th. That Driscoll made no contract to work in this employment for ten or any other specified number of hours per calendar day.

5th. That the receipts given by Driscoll for his wages were given in ignorance of his rights, and under the belief induced by the rep-
29 resentations of Mullett, Ordway, and others, that he was not employed by the United States, but by Ordway as a contractor.

6th. That the work of cutting, dressing, and boxing the granite was all done and performed by the day, under the superintendence, direction, and control of the agents and officers of the United States, while the quarrying and furnishing the granite in the rough was under that of Ordway, the contractor, exclusively, subject only to inspection and acceptance by the United States.

7th. That the United States, during the same time for which claimant was employed, paid to stonecutters, for similar work on the new
30 State Department, at the city of Washington, the same wages per calendar day of eight hours as those paid to claimant for ten hours.

8th. That the United States repaid to workmen engaged at same time on public buildings in the city of S't Louis the difference between eight and ten hours' labor, they having been required to work ten hours by the officers and agents in charge of that work, although the said workmen had previously given receipts in full similar to those given by claimant in this case.

9th. That the United States kept a storehouse at the locality
31 where the said granite was cut and dressed, from which a great portion of the materials used in that work was supplied. And the tools used in said work were marked with the letters U. S. and belonged to the United States, and were turned over, when work was ended or suspended, as government property.

All of which is submitted.

J. DANIELS,
SHELLABARGER & WILSON,
JOS. CASEY,
Counsel for Claimant.

WASHINGTON, D. C., *Febr'y* 1, 1878.

Rulings of the court upon the foregoing requests of the claimant for additional findings of fact.

32 1. The first is refused because the notice inviting proposals on which the contract between the defendants and Ordway was made is fully set forth in the findings.

2. The second is refused because the intention and purpose of the Secretary of State in making the contract with Ordway was not proved, and because the intention and purpose as requested to be found are immaterial.

3. The third is refused because the manner and form and the time of claimant's employment, and the manner of the payment of his wages, and how and by whom paid, are as fully set forth in the findings as the evidence warrants.

32 4. The fourth is refused because the facts showing exactly how

the claimant was employed are fully set forth in the findings according to the evidence.

5. The fifth is refused in the form set forth as not warranted by the evidence, and instead thereof the court makes an additional finding numbered XII containing as much of that here requested as is allowed.

6. The first paragraph of the sixth is refused because the manner in which the work was done and performed is as specifically set forth in the findings as the evidence warrants.

34 The second paragraph is allowed in the words set forth in an additional finding numbered XIII.

7 & 8. The seventh and eighth are refused because the claimant's employment being at Richmond, V'a, it is immaterial in this case what the defendants paid to stone cutters for similar work in the city of Washington, D. C., or what wages or how they paid laborers in St Louis, Mo.

9. The ninth is allowed as set forth in an additional finding numbered XIV.

35 VIII.—*Opinion of the court.*

RICHARDSON, J., delivered the opinion of the court:

This is an action for work and labor, wherein the claimant seeks to recover payment for one-quarter part more in numbers of day's work than were allowed to him on settlement, on the ground that his day's works were reckoned by calendar days, in each of which he labored ten hours, whereas he insists that he is entitled to be paid for every eight hours, as a day's work, the same wages allowed to him for each calendar day in which he worked ten hours, under the provision of the act of Congress passed June 25, 1868 (15 Stat. at L., 77), declaring that "eight hours shall constitute a day's work for all laborers, workmen, and mechanics now employed, or who may hereafter be employed, by or on behalf of the Government of the United States." (Now Rev. Stat., § 3738.)

At the outset the claimant is met with the objection on the part of the defendants that he was not in their employment, but was in the service of Albert Ordway, a contractor, who had agreed to furnish all the labor, of which that of the claimant formed a part, and to

36 whom they have paid the agreed price, and therefore there is no privity of contract between the parties to this action, and the defendants are under no obligations to the claimant.

In the act of March 3, 1871, ch. 113, sec. 2 (16 Stat. at L., 494), making appropriations for legislative, executive, and judicial expenses, it was enacted "that the sum of five hundred thousand dollars be, and hereby is, appropriated out of any moneys in the Treasury not otherwise appropriated, for the construction, under the direction of the Secretary of State, on the southerly portion of the premises now occupied by the War and Navy Departments, a building which will form the south wing of a building that when completed will be similar in the ground plan and dimension to the Treasury building, and provide accommodations for the State, War, and Navy Departments. * * * * "

On the 16th of November, 1871, the Secretary of State, through A. B. Mullett, Supervising Architect, in behalf of the United States, entered into a written contract under seal with Albert Ordway, by which said Ordway covenanted to furnish all the granite for the exterior walls of the superstructure of said buildings, the walls of the court-yard excepted, in the manner and at the prices therein agreed upon to be paid by the defendants, the terms of which are not material in this case. In addition

to furnishing the stone, it was therein provided that "the party of the second part [said Ordway] hereby agrees to furnish all the labor, tools, and materials necessary to cut, dress, and box at the quarry or quarries all the granite aforesaid in such manner as may be directed by the party of the first part [the defendants]; * * * and the party of the first part, acting for and in the behalf of the United States, doth covenant and agree to pay, or cause to be paid, unto the said party of the second part, or to his heirs, executors, administrators, or assigns, in lawful money of the United States, the full cost of the said labor, tools, * *. and materials, and also the insurance on the granite, increased by fifteen (15) per centum of such cost: and for the purpose of determining the amount thereof, the party of the first party shall employ such agent or agents as he may deem necessary, who shall take an account of such cost and expense, and shall for that purpose be afforded all necessary and proper facilities by the said party of the second part."

Ordway entered upon the performance of his contract, and furnished all the labor, tools, and materials for dressing and boxing the granite during the whole period of the claimant's employment, and was paid therefor by the defendants in monthly payments, upon vouchers made out each month for the cost of labor, &c., with fifteen per cent. added thereto, according to the terms of the contract.

Among the numerous laborers employed was the claimant, who worked from March 25, 1872, until October, 1873, except the month of September, 1872, eighteen months in all. He commenced without an express or special contract, and at the end of each and every month for the whole eighteen months, he, with all the other laborers, signed a receipt in which he and they acknowledged "to have received from Albert Ordway the amounts set opposite their names, respectively, in full payment for our [their] services for the time specified," and the number of day's work for the months, the rate of wages, and the full amount thereof were set opposite each name. These receipts were returned monthly to the Treasury Department by M'r Ordway, with his bill, and made part of his voucher, and he was paid therefor by the defendants, with fifteen per cent. added, as before stated, and the claimant was paid according to his receipt by Ordway.

In the multifarious transactions of business, the hiring of one
37 person to furnish the labor of others, in which the latter are the servants and employés of the person who agrees to furnish the labor, and who alone is responsible to them for their wages, with no privity of contract between them and the party for whose ultimate use the work is done, is of such daily occurrence as to be a familiar matter of common knowledge.

A clearer case of that kind could not be presented than is shown by the written documents set forth in the findings, wherein it was expressly agreed that Ordway should furnish the labor, that the defendants should pay him the cost thereof, with fifteen per cent. added, and from which it appears that the claimant was one of the workmen who performed the labor; that he received from Ordway his pay monthly during eighteen months, and that he regularly each month gave a receipt acknowledging that he had received from said Ordway the wages specifically mentioned in full payment for his services for the time specified.

The claimant's counsel endeavor, in their argument, to overcome the force of the written contract between the defendants and Ordway, and the legal effect of an employment of the claimant by him, on three grounds:

1. That the contract between the defendants and Ordway, or so much

thereof as relates to furnishing labor, was void because it did not conform to the terms of the public notice inviting proposals, in that the clause by which Ordway was to furnish labor and the United States were to pay him therefor with a percentage added, was not founded on anything set forth in the advertisement, as they urge was necessary under the act of March 2, 1861, § 10 (12 Stat. at L., 220, now Revised Statutes, § 3709), requiring all purchases and contracts for supplies, &c., in any of the departments, to be made by advertising, except in certain cases therein stated.

To this proposition it is a sufficient answer, that at most the contract was only voidable, and if the defendants might have avoided it in whole or in part, for any reason, they never availed themselves of their right, and the contract was never repudiated, but was performed and fully executed on both sides for the period of the claimant's employment. What has been done with the concurrence and to the satisfaction of both parties to a voidable contract cannot be set aside and undone by others not parties thereto.

2. That the contract was absolutely void because, as they allege, it was made with the intention and for the purpose of evading the "eight hour law," and so was a fraud upon the claimant and all other laborers, workmen, and mechanics employed by Ordway in its execution.

What was the motive of the honorable Secretary of State in entering into a contract in this form is not found as a fact, but if we were called upon to infer it from the transaction set forth, we might think that he desired to avoid liability on the part of the United States to a great number of workmen separately, preferring to consolidate the liability to one person, or that he wished to have, to a greater or less extent, the personal supervision of an experienced contractor, in his own interest, over the employes, or the responsibility of one contractor and his bondsmen for the acts of all the laborers, or that, deeming it his duty to advance the work intrusted to his judgment and discretion to the utmost extent that a judicious and economical expenditure of the money appropriated would effect, he did contract with Ordway to furnish the labor, because, among other advantages to be gained thereby, he believed that Ordway, as a contractor, could make better terms and employ laborers at a less rate than the defendants could directly through their officers and employes, and in either case we see nothing illegal or
38 improper in such motives or the action induced thereby. To evade an act of Congress by the legal execution of a right in such a form as not to come within the terms of the act is by no means necessarily a violation of it. But with the motives of the Secretary of State or any other parties to the contract, we have nothing to do. They are wholly immaterial in this case.

3. That whether the contract was void or not, the officers of the United States so acted in the transactions as to make the defendants principals, with Ordway as their agent, and so they are liable to the claimant for payment for his services as though he had been directly employed by or for them.

It is true that the findings show that the defendants did employ, directly, a superintendent to look after the work, see that the laborers were not paid more than market-rates, and to certify to the pay-rolls, and otherwise to supervise the work; and also a clerk, who kept a ledger account of the time of the workmen, made out the pay-rolls, and saw that they were properly signed. But all this was in pursuance of their interest under the contract with Ordway, and of its express provisions that they might employ such agent or agents as they might deem

necessary, to take an account of the cost and expense; and for that purpose they were to be afforded all necessary and proper facilities by said Ordway. And it is true that Ordway conformed to the wishes, or directions, if they may be so called, of the defendants' supervising architect, in the employment of men, in the hours of labor required of them, and their compensations, and followed in other matters, to some extent, if not entirely, the directions of the government superintendent. All this is entirely consistent with their contract, and does not make them principals in the employment of the claimant and his fellow-workmen.

The interest of the United States and that of Ordway were directly antagonistic in respect to the price to be paid laborers, because the more he paid the greater his commission, and as the defendants were to pay him for both, they would be doubly the losers by too high wages; and it was natural, proper, and judicious for their officers to take all means within their power to see that they were not made to pay more than the market-rates of wages, and to exercise their influence and authority upon Ordway to keep him within reasonable bounds in incurring expenses, and the cost of labor which they were finally to pay him for. Such an interference was not sufficient to make the defendants' principals liable directly to the claimant.

But even if the defendants were the principals, directly liable to the claimant, we are of opinion that he has no cause of action. In Martin vs. The United States (10 C't Cl. R., 276), we held that the "eight-hour law" does not regulate the compensation to be paid to employés, but leaves that to be determined by the contract of the parties, or the rules of law, and that it does not place laborers and mechanics under any disability in making contracts, nor prohibit them from working more than eight hours each calendar day, nor in any way prevent them from waiving its intended beneficial provisions, and our opinion was sustained by the Supreme Court on appeal, and the judgment which we entered against our opinion, pro forma, in favor of the claimant for the purpose of an appeal, which could not otherwise have been availed of by reason of the sum in controversy being less than $3,000, was reversed. (United States vs. Martin, 94 U. S. R., 400, and 12 C't Cl. R., 87.)

The Supreme Court held substantially as we did, that the act was a direction by Congress to the officers and agents of the United States,
39 establishing the principles to be observed in the labor of those engaged in its services; and that it prescribes the length of time which should amount to a day's work when no special agreement is made upon the subject.

In this case the claimant was employed and set at work without any express contract as to either the hours of labor or the amount of his wages. This created an implied contract as strong as any express contract can be, that he should be paid on a quantum meruit for what his services should be worth. And it appears by the findings that his services were worth, measured by the wages of laborers employed in like manner, on like work, in the same locality, precisely what he received for ten hours' work per day. If, in the computation, his time should be reduced to eight hours for a day's work, then his compensation should be reduced in the same proportion, in order to pay him on a quantum meruit, and the result would be the same as was reached in the settlement.

But the case is stronger against the claimant even than that, for at the first he began work at ten hours a day, and at the end of the first calendar month, in which he worked five and a half days, his wages were agreed upon in the strongest possible manner, by being put in writ-

ing and receipted for by him in full payment for his services during the period specified. And this he did, month after month, to the end of his term, giving eighteen receipts in all, in each of which the time of service by days, the rate of compensation per day, and the amount, were distinctly specified, and he receipted therefor in full payment. Thus by his own agreements he is concluded.

There is but one other ground on which the claimant's case can be sustained, even if the defendants are the principals, and that is, as practically put forth in the argument, that the "eight-hour law" was intended to give, and by its very terms does operate to give, to all laborers, workmen, and mechanics employed by or on behalf of the Government of the United States, who labor ten hours a day, twenty-five per cent. more wages than they agree to work for when there is an express contract, or than their services are worth, as measured by like services between individuals in the same locality, when there is no express contract.

We know of no rule by which that intention or effect can be drawn from the language of the act or otherwise; and to adopt such a construction would be no more reasonable than it would be to hold that the act operates to give to laborers who work only six hours a day one-fourth less rate of wages than is agreed upon when there is a special contract, or than the services are worth when there is no special contract.

For these reasons we are of opinion that the claimant is not entitled to recover; but as it is understood that there are some two thousand cases on the docket of this court awaiting the final determination of the questions herein discussed, and the parties desire the opinion of the court of last resort thereon, we are disposed to do as we did in Martin's case, enter judgment pro forma for the claimant, that the case may be taken to the Supreme Court on appeal, and the opinion of that tribunal may be had on all these questions, which affect so large a class of citizens, involve the construction of a statute which may apply to so many employés of the government, and are material to the accounting-officers in the settlement of accounts under so many contracts made by public officers, that their final authoritative determination is a matter of public importance.

Judgment will therefore be entered in favor of the claimant for $244.37.

40 IX.—*Final judgment.*

And now, to wit, February 4, 1878, for the purposes of an appeal to the Supreme Court of the United States, judgment is ordered to be entered, as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the said James Driscoll, claimant, do have and recover of and from the United States the sum of two hundred and forty-four dollars and thirty-seven cents ($244.37).

41 *Application for appeal and order allowing same.*

From the judgment rendered in the above entitled cause on February 4, 1878, in favor of claimant, the defendants, by their Attorney General, on the 12th day of February, 1878, make application for and give notice of an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Ass't Attorney General.

A. D. R.

Filed February 13, 1878.

Upon the foregoing application for allowance of appeal the court made the following order, to wit:

Ordered, That the appeal be allowed as prayed for.

42 In the Court of Claims.

JAMES DRISCOLL
vs.
THE UNITED STATES. } No. 8009.

I, John Randolph, Assistant Clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the findings of fact by the court, and the conclusion of law thereon; of the requests of claimant for additional findings of fact and the rulings of the court thereon; of the judgment of the court; of the application of the Attorney-General for the defendants for the allowance of an appeal to the Supreme Court of the United States, and of the order allowing same.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington this sixteenth day of February, A. D. 1878.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 1053. The United States, appellants, vs. James Driscoll. Court of Claims. Filed 25th February, 1878.

REC. 1053—3

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

THE UNITED STATES
vs.
JAMES DRISCOLL. } No. 1053.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

The United States adopt for their brief the Opinion of the learned court below; which,—together with a satisfactory summary of the facts in the case,—contains a clear and full statement of the principles of law that, as is submitted, must govern the result.

S. F. PHILLIPS,
Solicitor-General.

Supreme Court of the United States.

No. 1053.

THE UNITED STATES, APPELLANT.

vs.

JAMES DRISCOLL.

Appeal From the Court of Claims.

BRIEF FOR JAMES DRISCOLL.

T. J. DURANT,
JOS. CASEY.
J. DANIELS,
S. SHELLABARGER,
Counsel for Driscoll

Beresford Pr., 523 7th St.

United States Supreme Court.

THE UNITED STATES, Appellant, *vs.* JAMES DRISCOLL.	No. 1,053. Oct. Term, 1877. On appeal from the Court of Claims.

BRIEF FOR JAMES DRISCOLL.

The claimant in this case, James Driscoll, sues the United States to recover $253.56, on the following allegations:

First. That he was employed by the United States as a stonecutter, near Richmond, in dressing and cutting stone for the new State Department, then being built at Washington, D. C., under the direction and control of A. B. Mullett, Supervising Architect, duly authorized and empowered by law to direct, control, and supervise the said work and employment by and in behalf of the United States.

Second. That claimant worked 224½ days for ten hours each day, for which he was paid the usual rates of wages, as follows:

For 5½ days, at $4.00 per day.
62½ days, at $4.25 per day.
156½ days, at $4.50 per day.

Third. That under the act of Congress, June 25, 1868, (15 S. L., 77,) and President's Proclamation, May 19, 1869, (16 S. L., Appendix No. 3,) claimant was entitled to receive a full and entire day's wages for each eight hours he labored in said employment.

Fourth. That the Government agents pretended that claimant was not employed by the United States, but by one Ordway; and relying on the truth of this representation, claim-

ant continued to labor for the number of days set forth, and to receive from the United States, through the said Ordway, the several days' wages then accrued of ten hours each, and gave receipts therefor, not knowing the real facts in the case, that your petitioner was employed by the United States and paid by them by moneys furnished to Ordway by the proper authorities of the United States.

Fifth. That Ordway was neither in fact nor in law a contractor for cutting, dressing, and boxing said granite, but a mere agent or servant of the United States in charge of said work, doing the same under the direction, management, and control of said Mullett, Supervising Architect, and of the agents and superintendents then and there employed by him. And that the facts alleged have only come to his knowledge since the cessation of his employment, September 30, 1873.

Sixth. That over and above eight hours per day, claimant worked 459½ hours, making $57\frac{1}{16}$ days, for which there is due and owing to him by the United States $253.56, for which he prays judgment.

The United States filed a general denial. The Court of Claims made findings of facts and conclusion of law: and from a *pro forma* judgment in favor of claimant, the United States have appealed. We say *pro forma* judgment, because the opinion of that court was adverse to the claimant: and was so rendered to enable this honorable court to pass upon the merits of the case.

Record, pp. 2 to 20, inclusive.

HISTORY OF THE CASE.

I, II, III. The Supervising Architect, Mullett, advertised, in 1871, proposals for granite for the new State Department. On June 19, 1871, Ordway submitted, in reply, a bid; and November 16, 1871, there resulted a contract between the Government of the United States and *Ordway*, which was approved by the Secretary of State November 18, 1871, and

recorded in the county of Virginia in which the quarries therein mentioned were situated.

IV. On December 18, 1871, there was a supplemental contract between these parties approved December 19, 1871.

V. In pursuance of this contract and its supplement, *Ordway* furnished tools, materials, and labor, and the defendants paid therefor during claimant's employment.

VI. The Government employed and paid an overseer to see that the work was done according to contract: that the price paid did not exceed the market rates; * * * to verify the time of the employees; * * * to keep an account of the cost of each particular stone, and the name of the man who cut it; * * * to approve all purchases of materials; * * * to certify, monthly, *Ordway's* bills therefor; * * * also, to notify *Ordway* that the services of any man he might specify were not satisfactory, and in case *Ordway* persisted in retaining him it would have been his duty to refuse to certify the pay-rolls. The United States also employed and paid directly by themselves a clerk to this superintendent.

VII. In January, 1872, *Ordway*, at request of *Mallett*, appointed *Miller* foreman of the granite cutters. His name was entered on the monthly pay-rolls as *Ordway's* employee, and was paid through *Ordway* like the claimant, and *Ordway* was allowed fifteen per cent on *Miller's* wages, as in the case of the other employees on said work, except said superintendent and (his) clerks.

VIII details the mode of payment. "We, the undersigned, acknowledge to have received from *Albert Ordway* the amounts hereunto set opposite our names, respectively, in full payment of our services for the time specified." Then the certificate of the superintendent and time-keeper. The vouchers on which *Ordway* was paid for labor are also annexed, certified and approved by the same officer.

IX. Claimant was in March, 1872, employed by *Miller;* the superintendent's clerk entered claimant's name on the time book, and nothing was said about the number of hours

per day nor wages. The rate of wages was fixed by the foreman of the gang, who was paid in the same manner and on the same rolls as *Miller*, claimant, and the other employees, who were laboring ten hours a day, and this mode of payment continued during his employment.

X. Claimant worked, as set forth in the second allegation of his claim, and receipted therefor in full payment for his services for the time specified. June 11, 1872, the Supervising Architect wrote to *Ordway* to "give the mechanics and laborers employed by you on the work of cutting and boxing the granite for the new State Department in this city the benefit of the eight-hour law from and after" * * *. Then claimant worked, was paid, and receipted in full for various days' labor of eight hours at $4.25 and $4.50 per day, until March, 1873, when the Architect told *Ordway* that thenceforward he would consider ten hours a day's labor, and would only pay him at that rate; and then all the laborers were required to labor ten hours each day for a day's work. Claimant worked in March, April, May, June, July, August, and September on a certain number of days, ten hours each day, at $4.50; receipted for the same, and was paid in the same way as in March, 1872.

XI. Claimant's daily wages were the same as those paid by private parties for like services of ten hours per day in the same locality; and the Government superintendent informed *Ordway* that his instructions were to certify the cost and expenditures made by him (*Ordway*) on the basis of wages paid in the locality.

XII. *Ordway* represented to claimant that he was executing said work as a contractor under the United States, and not as a servant or mere employee of the Government, and under this belief the receipts for wages were given.

XIII. The quarrying and furnishing the granite in the rough was done under the exclusive control of *Ordway*, subject only to inspection and acceptance by the United States.

XIV. The Government kept a storehouse at the locality, where said granite was cut and dressed, from which a great

portion of the materials used in the work in which claimant was engaged was supplied, and the tools used in said work were marked with the letters "U. S." and belonged to the United States, and were turned over, when work was ended or suspended, as *Government property*.

On this statement of facts, the Court of Claims was of opinion:

First. That claimant was not in the employ of the Government, but in the special employ of Ordway; and, consequently, neither the eight-hour law nor the President's proclamation had any bearing upon or connection with the case.

Second. That if the legal relation of employer and workman did exist between claimant and the United States, then claimant has no cause of action. He is concluded by his own agreements—his eighteen receipts.

Third. That the eight-hour law was not intended to give to workmen situated as claimant twenty-five per cent. more wages than they agree to work for when there is an express contract, or than their services are worth, as measured by like services between individuals in the same locality, when there is no express contract.

In all of which conclusions, we contend, there is manifest error.

ARGUMENT.

The first question to be solved here is, what is the legal relation of the claimant to the United States? For it is manifest, if there was no privity of any kind between them, claimant has no case; and is absolutely destitute of all interest in the subject-matter of the suit.

Abstracting entirely from our consideration for the moment, the eight-hour law and the President's proclamation, we find the following facts: The claimant is a workman, engaged in cutting, dressing, and boxing the granite to be used in building the United States State Department, and under the superintendence and control of a special agent of

that department, and paid by the United States on the written certificate and approval of said special agent and timekeeper by the day's work. Is such a workman the servant of the United States?

The lower court declares that a clearer case could not be presented than this, in which *Ordway* was hired by the United States to furnish the labor of others, in which the latter are the servants of the person who furnishes the labor, and who is alone responsible to them for their wages, *with no privity of contract between them and the party for whose ultimate use the work is done.*

A reference to elementary principles governing the hiring out of labor or industry will, we think, demonstrate this conclusion erroneous. Such a contract is defined to be that by which one of the parties binds himself to do something for the other, in consideration of a certain price agreed on by them both.

Pothier, Contracts of Hiring, 393.

Parsons on Contracts, 1st Vol., 101.

That is, the thing, the price, and consent are absolutely necessary. Here all three are under the absolute empire and will of the Government. The thing, *i. e.*, the day's labor; the price, the day's pay; the consent, entirely at the pleasure of the Government's special agent. *Ordway* was to furnish the laborers by the contract with the United States, and for this furnishing he was to receive fifteen per cent. on the amount of wages. This did not make the laborers his servants, nor did it make him liable for their wages; it would be passing strange that the keeper of an intelligence office, when he furnishes us with an excellent cook, or a faithful house servant should, by this action, constitute the servant his servant, and become liable for his pay. This analogy is pertinent, and is founded on an accurate knowledge of the essential matters of fact underlying the case. The keeper of the intelligence office has no kind of connection with the employer, but to receive his percentage or brokerage upon the employment. He has no connection

whatever with the services, or their nature, or the way in which they will be employed. He furnishes the laborer, but the whole employment is under the control and management of the owner of the business. So here, too, *Ordway* had no kind of connection with the United States, so far forth as the services or labor of the claimant is concerned. All *Ordway's* work, so far as the granite is regarded, had ended by its delivery to the United States to be cut, dressed, and boxed. He had performed all his services when he had quarried and delivered the granite in its rough state. For all the residue, he furnished the labor, tools, and materials—the *instrumentalities* by which the granite was to be finished; but he was not the master or controller of the labor or laborers, or of the tools and materials. The tools and materials were stamped with all the insignia of ownership; but they were no more and no less in the ownership of the United States, as found by the Court of Claims in Finding XIV, than was the labor of the workmen employed for the Government owned by Ordway. If by *vis major*, these tools and materials, as well as the quarried granite in the course of being cut and boxed, had perished, the loss would, beyond all doubt, have fallen on the United States. *Res perit domino.* A contract to furnish labor, means laborers; *i. e.*, the instrumentalities of labor.

It is possible that between the United States acting through *Mallett*, as Supervising Architect, and *Ordway*, under the contract and its amendment, many legal relations might exist cotemporaneously: *e. g.*, a contract to furnish "dimension granite," which would originate the relations of vendor and vendee; by the retention of one-tenth of the price of the granite, those of pledgor and pledgee; by the contract to furnish labor, those of principal and agent; by the letting of the quarry, those of landlord and tenant, as well as principal and security. But under no collocation of the facts can *Ordway* be brought into the legal relations of master and servant. He entered into no contract of hiring of labor or industry with the United States. He was their vendor

of "dimension granite;" he was their agent in procuring laborers. For this procurement he was paid a commission, brokerage, or compensation of fifteen per cent. on their wages; and his services included his disbursement of the moneys of the United States to the laborers of these wages; his taking a receipt from each: their identification, etc. And hence, it irresistibly results that the United States, as master, entered into a contract with every laborer or servant whose name was borne on the pay-rolls of the United States.

Mullett, the Supervising Architect, furnished the superintendent and time-keeper, as well as his clerk. But *Mullett* was the mere agent of the United States in these appointments. He also furnished *Miller*, as a foreman to *Ordway*, over the laborers. These relations cannot be changed. The time-keeper and clerk, and *Miller*, the foreman of the granite cutters, stand in the same relation precisely to the United States, as employees. *Pro hac vice*, Ordway and Mullett were both agents of the Government; and the time-keeper and clerk, in all human probability, received the additional compensation from the United States which this laboring man, the claimant here, has thus far failed in obtaining.

Bearing in mind, then, the legal maxim, *homo qui placea personas sustinet*, and carefully noting the various relations existing between the United States and *Ordway*, separating them and realizing the legal institutes to which they belong, and the clear result will be that Driscoll was the servant or workman of the United States in law and in fact, as ascertained by the Court of Claims in its findings of fact but denied in its conclusion of law.

We are in the presence of an *executed* contract, completed to the satisfaction of all parties; a contract in which Driscoll labored for the United States, under the superintendence and time-keeping of a special agent of the United States, and who was paid directly from the Treasury of the United States through the agency of *Ordway*. It cannot, in

view of all these plain principles of law, be now safely held that *Driscoll* was not an employee of the United States, but only of *Ordway*.

So with shipping masters procuring a crew of sailors. Are the sailors the employees of the owners of the ship or of the shipping master? Suppose the owners had, after the completion of a successful voyage, awarded extra pay to the sailors and placed the money to pay them in the hands of the captain, it would look somewhat like an absurd defense in him to decline meeting the just demands of the sailors and to refer them to the shipping master as their employer.

Stone *vs.* Codman, 15 Pickering, 297.

Hilliard *vs.* Richardson, 3 Gray, 349.

Railroad Co. *vs.* Hanning, 15 Wall, 649-656.

We conclude that, both on principle and authority, *Driscoll* was in the employment of the United States, and not of *Ordway;* that he was a workman of, and employed by and on behalf of the United States, and that the form of the contract is immaterial when the substance, purport, and effect of it, as well as the intention of the United States, are so clear and unmistakable.

II.

But the lower court seems to be self-conscious that this part of their opinion is untenable, and that it would be altogether unsafe and injudicious to rest their decision on this ground. So it declares that "even if the defendants were the principals directly liable to the claimant, we are of opinion that he has no cause of action," because the Court of Claims has virtually decided in Martin's case "that the eight-hour law does not regulate the compensation to be paid to employees, but leaves that to be determined by the contract of the parties, or the rules of law, and that it does not place laborers and mechanics under any disability in making contracts, nor prohibit them from working more than eight hours each calendar day, nor in any way prevent them from

waiving its intended beneficial provisions, and our opinion was sustained by the Supreme Court on appeal," &c.

The act of May 18, 1872, 17 Stat., 134, providing for repayment of laborers whose pay had been reduced by the reduction of the hours of labor, under the act of June 25, 1868, is a clear legislative construction and interpretation of the provisions of the eight-hour law. It reaffirms not only that eight hours shall constitute a *full day's labor*, but that so many hours' labor shall entitle the workman to a *full day's wages*.

The Executive authority, intrusted with the execution of the act, concurred in this interpretation. See the President's proclamation of May 19, 1869, 16 Stat., 1127, in which he says: "No reduction shall be made in the wages paid by the Government by the day to such laborers, workmen, and mechanics on account of such reduction of the hours of labor." Also, the proclamation of May 11, 1872, 17 Stat., 955, after reciting that the eight-hour law had not been strictly observed, says: "Now, therefore, I, Ulysses S. Grant, President of the United States, do hereby again call attention to the act of Congress aforesaid, and direct all officers of the Executive Department of the Government having charge of the employment and payment of laborers, workmen, or mechanics employed by, or on behalf of the United States, to make no reduction in the wages paid by the Government by the day to such laborers, workmen, and mechanics on account of the reduction of the hours of labor."

Opinion of Attorney General Evarts, 12 Op., 530.

Opinion of Solicitor General Bristow, 14 Op., 37.

Opinion of Solicitor General Bristow, 14 Op., 45.

Certain forms are provided for certain contracts made by the United States, without which they are null, *e. g.*, "all contracts for supplies or services in any of the Departments of the Government, *except for personal services*, shall be made by advertising for proposals," etc. Bearing this law in mind we will better understand not only the legal relations between *Driscoll* and the United States, but also the reasons why there

was grafted on the contract made by the United States with *Ordway after* advertisements, a sub-contract with him to furnish labor *without* advertisements. (R. S. U. S., 3709, 3717.)

The act, June 25, 1868, (15, U. S. Stat.-at-Large, p. 97, now R. S., 3738,) constitutes eight hours a day's work for all laborers, workmen, and mechanics. Then comes the President's proclamation of May 19, 1869, (16, U. S. Stat., p. 1127,) directing "that from and after this date no reduction shall be made in the wages paid by the Government by the day to such laborers, workmen, and mechanics, on account of such reduction of the hours of labor."

Then came the act of May 18, 1872, (17, Stat.-at-Large, 134,) and the President's proclamation of May 11, 1872, (17, Stat.-at-Large, 955,) directing the settlement and payment of the laborers, etc., "without reduction on account of reduction of hours of labor."

On March 13, 1877, was rendered the judgment in the case of the United States *vs.* Martin, (94, U. S., 400,) on which the lower court so much relies in this case, and which it deems entitled not only to implicit obedience but absolutely and unconditionally to control this case.

Martin's case declares the eight-hour law to be "a direction by Congress to the officers and agents of the United States, establishing the principle to be observed in the labor of those engaged in its service. *It prescribed the length of time which should amount to a day's work, when no special agreement was made upon the subject.*" P. 402.

The measure was one of strict public policy. The Government might specially contract for workmen for more or less hours than eight each day. The statute is directory to the employer that eight hours shall constitute "*a proper length of time for a day's labor*, and that his *contracts shall be based upon that theory.*" P. 404.

Here there was no special contract with the claimant; there was no price fixed for the labor; the fact that the United States was the employer was carefully concealed from him. He was made to work for the Government ten hours

per day in the months of March, April, May, June, July, August, and September; and though no special agreement had been made with him, the day's work, in direct violation of the statute and of the President's two proclamations, was, as to the claimant, constituted of ten hours. And this ten hours was subdivided into fourth parts of two and a-half hours each instead of two hours each; so that, in many instances, although claimant had really worked his one day's work of eight hours, the United States only paid him for three-fourth's of a day's labor by the act of Congress! Such a construction of the act could not be even plausibly supported by the most exacting employer and capitalist: it is simply incredible. (See pay-roll at foot of Rec., p. 11.)

Now, *Ordway* had not the slightest connection with the claimant and his employment. He did not fix claimants' time, nor his wages, nor his duties, any more than the intelligence office keeper fixes these elements of the contract of hiring of the householder's servants, or the shipping master of the ship's crew. True, *Ordway* was the "conduit pipe" through which the wages flowed, just as the sailor's advance money may pass to the sailor through the shipping master. But *Driscoll*, the claimant, was directly employed by the United States, their officers and agents, who arbitrarily fixed his time, his wages, and his duties; reduced or raised his wages at their pleasure or arbitrary will, as well as the hours constituting a day's work, and could turn him off in the same way, had they been so minded; and these facts were not only carefully concealed from him, but a sham and simulated agent and employer, *Ordway*, set over him. And for what object? For the very purpose of withdrawing the laborer from the operation of the eight-hour law without his being aware of it, and of continuing that perfunctory observance of the act of Congress and the President's proclamation, denounced by the second proclamation dated May 11, 1872. The policy of that President was direct, open, peremptory; known of all men; proclaimed in all ways, and as to all laws, without exception or limitation.

In the opinion of that great warrior and statesman, this law was made in the interest of labor, and was a great national public policy; and that, like all other laws, it must be strictly enforced by him under his official responsibility.

What was this national public policy? The world's experience for decades of centuries had demonstrated that a work-day of ten hours was too long for the average human endurance; that the laborer, after thus laboring, was altogether unqualified for the enjoyments of home and family; that he came from work depressed, gloomy, dispirited, and was impelled by the rigorous demands of his own nature to seek relief wherever he could find it. That he flies to alcohol or some other stimulant, by virtue of an inexorable law; and thus, too frequently, wrongs his family, society, and himself. This is evidently the moral aspect of this national policy. Its economic aspect is quite as clear. "If we diminish the hours constituting a day's work from ten to eight," said the legislator, "we not only procure the moral advantages of the change, but by virtue of the natural law we will obtain nearly as much work, if not quite, and certainly work better done, by fresh, active, and undepressed workmen, in eight hours, than by overworked and depressed laborers in ten. Besides, we offer an excellent example both to the States and the citizens of the United States. Our object is not to regulate the demand and supply of labor in the labor market, but to give to the national workman the very same pay for eight hours' labor as the private citizen and employer gives for ten."

On June 11, 1872, within a few weeks of the act of Congress of May 18, 1872, and the President's proclamation of May 11, 1872, when a daily violation of law became dangerous, Mullett, Supervising Architect, ordered Ordway, as follows: "You will *please give* the mechanics and laborers employed *by you* on the work of *cutting and boxing* the granite for the new State Department in this city *the benefit of the eight-hour law, from and after the date of this letter.* It is not

expected that any *reduction* will be made on this account." *Post hoc, ergo propter hoc.*

This letter we regard as the pivot of this case. *First.* It expresses the very opposite of what it knows to be the true relations of the laborers to the United States: the laborers were not employed by *Ordway* on the work of *cutting and boxing* the granite. They were employed by the United States, and not by *Ordway*. *Ordway* was to furnish the laborers, and pay them with the funds of the Government on a commission of fifteen per cent. The form of the contract is immaterial: and yet it is put prominently forward for the purpose of misleading the operatives. *Second.* The relation of employer and employee between the United States and this claimant, is demonstrated by the conferring of the benefit of the eight-hour law. The apparent reduction of the amount of labor from ten to eight hours, one-fifth or twenty *per cent.*, could only have been made by the United States; and this is proved by the assertion of the expectation, that no "reduction (of wages, of course,) will be made on this account." The "reduction" was by no means an "expectation:" it was the result of a peremptory order from two Departments of the General Government, the Executive and Legislative. The laborers in *quarrying* the granite never received the benefit of the eight-hour law.

Before the 11th June, 1872, the withholding from the claimant of the benefit of the eight-hour law, was a direct violation of the enacted public policy of the Government by its officials: an error, or a fraud, which the United States are bound to make good to the claimant. If he were legally entitled to the benefit of the eight-hour law at all, it is to be extended to all his labor, and not restricted only to a portion of it.

Before the work was renewed in March, 1873, *Mallett* told *Ordway* that he would consider ten hours a day's labor, and would only pay at that rate, and from that time forward all the laborers were required to labor ten hours each day for a day's pay.

Of course, this action was purely arbitrary, and in direct opposition to the acts of Congress and President's proclamations. "His instructions were to certify the cost and expenditures made by him, the said *Ordway*, upon the basis of wages paid in the locality," *by private persons*, upon that very basis which, as we have seen, was repudiated both by statutes and proclamations

We do not understand the doctrine of the Court of Claims to differ from this statement of the principles of law governing the case. If the claimant was employed and paid by the United States: that is, if the relation of master and servant existed, then the doctrine of that court is, that claimant is *estopped* by his *eighteen* receipts, and *the agreement evidenced by them*.

But receipts are always open to explanation: and it is too plain to be contested, and besides it is specially embraced in the findings of the court, that the claimant signed all these receipts under the belief induced by *Ordway*, "that *Ordway* was executing said work as *a contractor under the United States*, and not *as a servant or mere employe of the Government*." See twelfth finding.

III.

It is manifest and apparent that the purpose and intention of this addition or supplement to the granite contract was either for the personal service and agency of Ordway, or was intended to evade the provisions, and defeat the operation and effect of the eight-hour law. In the first instance the contract would be valid: in the other void. For I need not argue here, that a contract by an officer in plain violation of, or to evade and defeat a statute, is void. As a contract the instrument we are considering is a violation of the words and purpose of the eight-hour law: against the legislative interpretation given to it by Congress in the act of May 18, 1872; the reiterated construction of the President, in his proclamations of May 19, 1869, and May 11, 1872; the interpretation by the Attorney General, and the decision of this court.

If we add to this the plain and palpable violation of the other statutes, already referred to, requiring advertisement and proposals before making such a contract, as well as an appropriation by Congress adequate to the payment, we shall see how utterly the law has been disregarded and violated, if the view of the Court of Claims is the right one: that it was intended to constitute Ordway a contractor, for cutting and dressing this granite. Especially so, when it is remembered that this supplement involved more than twenty times in amount the main contract, and more than ten times the amount of the appropriation existing when it was made.

As an instrument, therefore, constituting Ordway a contractor of this work, it is on both the grounds stated, illegal and void. As a contract, for the personal skill, services, and agency of Ordway, it may be upheld. And the well settled rule of law is, that that interpretation, which will sustain and uphold a contract as valid and legal, is to be adopted in preference to one which will make it illegal and void.

We conclude, therefore, that this is either a contract for the personal services of Ordway, or that it is wholly void. In either case we have been employed by and on behalf of the United States, and are entitled to recover.

See Chitty on Cont., 589; Poole *vs.* Wiggins, 3 Scott, 501; Battersby *vs.* Smith, 3 Mod., 110; Story on Cont., 2nd. edn. six, section 613; 3 Barn. and A., 221; Story on Cont., 621. *c* See also Whart. on Agency, sections 274, 277, and 278, 282, 283, *et seq.*, and 538; Whart. on Negl., sections 156, *et seq.*, 181; Bissell *vs.* Rodon, 34; Miss. Rep., 63; Loomis *vs.* Simpson, 13 Iowa, 532.

IV.

No imputation upon the motives of the Secretary of State is made or intended by the chairman. Whilst we admit that neither the Court of Claims nor ourselves have anything to do with these motives, we repudiate that most abominable and destructive principle that the arrangement between *Walker*

and *Ordway* was made to save money for the United States by wringing out of the laborer two hours daily of profit and advantage. The whole theory of our case is based upon the receipt of these extra two hours of daily work by the United States authorities; not by any means whatever, direct or indirect, upon the assumption that some person other than the United States profited by the violation of the law.

Ordway knew he was not executing the work on which the claimant was employed, and yet he induced the claimant to believe this. It was both *suppressio veri* and *suggestio falsi*. In this course *Melhuish*, the Supervising Architect, cooperated actively. *Ordway* and *Melhuish* dealt with the claimant in the scope of their employment by the United States. If the United States received and benefitted by the two hours extra labor of the claimant the implied contract to pay for it is incontestable.

Whilst we admit that on the authority of United States *vs.* Marvin, 94, U. S., 400, the eight-hour law was not intended to give to workmen situated as claimant twenty-five per cent. more wages than they agree to work for when there is an express contract, we deny most emphatically that when there is no contract the *quantum meruit* is measured by *like services between individual in the same locality* as to *time*. We think such a doctrine is in direct hostility with the laws and Presidential proclamations.

But we also assert that, under these laws and proclamations, it follows, as matter of law, that in all cases of workmen by the day under a special contract, the time specified for a day's labor in hours is conclusive upon the parties: and that if twelve hours be fixed for a day's work and only six hours of work be done, there should be a reduction of fifty per cent. But if no number of hours be specified, the law makes a day's work consist of eight hours, and if laborers only work six hours a day, they only earn the wages for three-fourths of a day, because six is three-fourths of eight. The meaning of the act and the legislative intent,

complied with the orders of the Executive, deprive the matter of all doubt.

On national public policy, see License Tax Cases, 5 Wall., 462-469.

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